

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No 467 of 1987

For Approval and Signature:

Hon'ble MR.JUSTICE D.C.SRIVASTAVA sd/-

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO
 2. To be referred to the Reporter or not? : YES
 3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
 5. Whether it is to be circulated to the Civil Judge? : NO

RM SUTHAR

Versus

CD PATEL

Appearance:

MR SURESH M SHAH for Petitioner
MR HM PARIKH for Respondent No. 1

CORAM : MR.JUSTICE D.C.SRIVASTAVA

Date of decision: 08/12/2000

C.A.V. JUDGEMENT

1. This is landlord's revision u/s.29(2) of the Bombay Rent Act.
2. Brief facts giving rise to this revision are as

follows :

The Suit premises was let out by the landlord Revisionist to the tenant - respondent on monthly rent of Rs.200/- besides taxes. The rent upto 31.12.1977 was paid, but the rent from 1.1.1978 to 30.11.1978 amounting to Rs.2200/- and Rs.69/- towards taxes fell due from the respondent. Notice of demand was served on 21.11.1978 which was served, but arrears of rent were not cleared within a month of service of notice of demand hence Suit for eviction was filed.

3. The Suit was resisted on the ground that the disputed premises was let out initially at Rs.170/- p.m. and the rent was enhanced thereafter to Rs.180/- and then to Rs.200/- p.m. He raised dispute of standard rent and pleaded that he has paid all the arrears of rent hence Suit was liable to be dismissed. He also filed Civil Misc. Application No.27 of 1978 earlier for fixation of standard rent of the Suit premises.

4. The trial Court consolidated the Suit for eviction and Civil Misc. Application No.27 of 1978. During pendency of the Suit application was moved by the tenant respondent for fixation of interim standard rent which was allowed on consent of the parties and Rs.200/- p.m. were fixed as interim standard rent.

5. The Suit as well as Civil Misc. Application for fixation of standard rent were decided by common judgment after close of trial in the Suit and the standard rent was fixed at Rs.170/- p.m.

6. The trial Court found that the tenant did not make effective compliance of Section 12(3)(b) of the Act and as such he was liable to be evicted. Decree for eviction was passed.

7. The tenant preferred Appeal which was allowed and the Decree for eviction was set aside hence this Revision.

8. Shri M.S.Shah, learned Counsel for the revisionist and Shri H.M.Parikh, learned Counsel for the respondent were heard and the records were examined. The Judgments of the two Courts below were also examined.

9. The first contention of Shri Shah has been that the Appellate Court was in error in considering the effect of amendment in Second Part contained in Section 12(3)(b)(i) deleting the word "regularly" by Section 2 of the Gujarat Amendment Act VII of 1985 and it was

illegally interpreted by the lower Appellate Court as being retrospective. According to his earlier view of the learned Single Judge of this Court holding that the amendment has retrospective effect was over-ruled by a Division Bench pronouncement of this Court in BAI SAKARBAI DEVRAJ V/S. IBRAHIM ABDUL, reported in 1994 (2) GLH 27, wherein it was held that the effect of the amendment deleting the word "regularly" from Section 12(3)(b)(i) is prospective and not retrospective. As such this part of the argument of Shri Shah has to be accepted because the matter has been settled by the Division Bench of this Court in the aforesaid case.

10. It is not in dispute that the case of the landlord was not covered u/s.12(3)(a) of the Act because the taxes were also claimed. It was found by the two Courts below that the case was covered by Section 12(3)(b) of the Act. The trial Court found that the tenant is not entitled to protection of Section 12(3)(b) whereas the Appellate Court has found that the tenant is entitled to protection of Section 12(3)(b) of the Act. It has therefore to be determined whether the tenant respondent is or is not entitled to the protection of Section 12(3)(b) of the Act. It is not in dispute that more than six months rent was due from the respondent which he failed to pay within a month of service of notice of demand. He however raised dispute of standard rent by moving separate Civil Miscellaneous Application No.26/78 on 17.4.1978. It remained pending. Notice u/s.12(2) of the Act was issued to the tenant on 21.11.1978. Thus, the dispute of standard rent was raised by the tenant before service of notice of demand u/s. 12(2) on him. The Suit was filed on 5.1.1979. Civil Miscellaneous Application No.26/78 was consolidated with the Civil Suit and was decided by a common Judgment. Standard rent at Rs.170/- was determined and declared on 31.8.1984 by the trial Court when the Judgment in the two matters was delivered under a common judgment. Prior to this, dispute of standard rent was not settled. During pendency of the Suit the tenant respondent moved an application for fixation of interim standard rent on 18.11.1978 which was allowed with consent of the parties and Rs.200/- p.m. was fixed as interim standard rent on 16.12.1982. Further direction was given that the defendant shall deposit the rent in arrears at the said rate on or before 15.1.1982 and shall go on depositing the rent in future on or before 5th day of every month. The defendant did not pay the interim standard rent within the time fixed by the trial Court and a sum of Rs.10,060/- fell due. On these facts the trial Court found that the tenant failed to deposit or pay the

interim rent regularly, hence decree for eviction was passed. The Appellate Court reversed this finding of the trial Court.

11. Shri M.S.Shah for the revisionist argued that in order to claim protection of Section 12(3)(b) the first obligation of the tenant is to pay or tender in Court the standard rent and permitted increase then due on the first day of hearing of the Suit or on or before such other date as the Court may fix and the second obligation is that the tenant continues to pay or tender in Court such amount or permitted increase till the Suit is finally decided and according to him both these conditions were violated by the tenant hence he lost protection of Section 12(3)(b) of the Act. He vehemently relied upon the order of the trial Court fixing the interim standard rent and argued that since the interim standard rent was not tendered or paid within the time fixed by the trial Court the tenant lost protection of this section and he further lost protection of this section because the entire arrears were not deposited on the first day of hearing. In support this contention that if the tenant fails to deposit regularly even the interim standard rent he renders himself liable for eviction two cases were relied upon by him, one is unreported decision of KHATRI VASANTRAI TRIKAMJI ASHRA V/S. MOHANLAL MANJI & ORS., Civil Revision Application No.1376 of 1978, decided on 16th/17th July, 1984 and RAMESHCHANDRA P. PANCHAL v/s. VITHALBHAI P. PATEL, reported in 1996 (1) GLH 253. In Khatri Vasantrai (supra) it was held by learned Single Judge of this Court that even if it is assumed that the case of the petitioner is really covered by Section 12(3)(b) even then he is not entitled to any protection because in spite of the Court's order fixing interim standard rent, he did not pay any amount even thereafter. Because of non-compliance with that order the defence of the tenant was struck off and hence it was held that it becomes apparent that the petitioner has not even complied with the requirement of Section 12(3)(b) of the Rent Act. Thus, according to this unreported decision even non-payment or not tendering the interim standard rent also renders the tenant liable for eviction. Same view was taken in RAMESHCHANDRA P. PANCHAL (Supra) where the provisions of Section 11(3), 11(4) and 12(3)(b) of the Act were considered. Inter-alia in this case this Court held that the Court has also jurisdiction to fix the interim standard rent u/s.11(3) where the application for standard rent is preferred before or after receipt of notice u/s.12(2). In this case the tenant did not move the Court for interim order. Thereafter the landlord

moved the Court u/s.11(4) and the Court fixed the interim standard rent at Rs.250/- p.m. and directed the tenant to pay the arrears of rent within a stipulated time and thereafter to pay it regularly. This direction was not complied with and therefore this Court held that it could safely be concluded that the tenant was not ready and willing to pay the rent. The Court proceeded to observe further that if the tenants fails to pay the arrears of rent as per the interim order on the first day of hearing of the Suit he will not be entitled to protection of Section 12(3)(b) of the Act. Failure to pay rent regularly as per interim order and direction during pendency of the proceeding will also disqualify the tenant from claiming protection of Section 12(3)(b) of the Act. Thus, compliance of both the conditions, according to this Court in Rameshchandra's case (supra), must co-exist. Failure to comply with one of the conditions will also render the tenant liable and the landlord becomes entitled to get ejectment decree. The failure to perform one of the conditions of Section 12(3)(b) will disqualify the tenant to seek the protection of this section.

12. However, in these two cases the Apex Court's verdict in VORA ABBASBHAI ALIMAHOMED V/S. HAJI GULAMNABI HAJI SAFIBHAI, reported in AIR 1964 SC 1341 was not considered. The Apex Court in this case has clearly propounded the distinction between the standard rent and the interim standard rent. According to the Apex Court Section 12(3)(b) requires the tenant to pay standard rent and not the interim rent and for the purpose of that clause the expression "standard rent" may not be equated with "interim rent" specified under Section 11(3). Compliance with an order for payment of interim rent is made by the Explanation to Section 12 conclusive evidence of the readiness and willingness to pay the standard rent, but that by itself is not a ground for holding that the interim rent which may be specified under sub-section (3) of Section 11 is standard rent fixed under Sub-Section (1) of Section 11. Standard rent for the purpose of Section 12(3)(b) is such rent as is already determined or may be finally determined under Section 11(1) of the Act. In view of this verdict of the Apex Court it is clear that the tenant is required to pay or deposit the standard rent on the first date of hearing and continue to deposit or pay subsequent rent regularly till the word "regularly" was deleted from the statute Book. Interim standard rent may be varied or modified at the time of final disposal of the application for standard rent. That is, what actually happened in the case before me. There was dispute of standard rent.

Initially the rent was Rs.170/- p.m. which was enhanced to Rs.180/- p.m. and then Rs.200/- p.m. Thereafter as a consequence of getting certain repairs and alteration the landlord was claiming rent at the rate between Rs.300/to Rs.500/-. The dispute was therefore bonafide dispute of standard rent. This dispute was not settled by the trial Court before finally deciding the eviction Suit. The tenant had done his job and moved an application for fixation of standard rent u/s.11(1) of the Act. The tenant could not have prevailed upon the Court to decide the application for fixation of standard rent earlier. It was choice of the trial Court to consolidate the Suit as well as Miscellaneous Application for fixation of standard rent. It was therefore, obligatory for the trial Court to decide the application for fixation of standard rent and unless the standard rent was determined the tenant could not have known what is the standard rent and at what rate he was required to tender in Court or pay to the landrldlord the standard rent on the date of first hearing of the Suit. Likewise he was in dark as to at what rate the standard rent is to be deposited in Court in future. Even if direction for payment of interim rent at the rate of Rs.200/- p.m. was not complied with, the tenant cannot be said to have lost protection of Section 12(3)(b) of the Act. The Apex Court in Vora Abbasbhai's case (supra) has held that where there is a dispute as to the standard rent the tenant could not be in a position to pay or tender the standard rent on the first date of hearing and fixing of another date by the Court for payment or tender would be ineffectual until standard rent is fixed. The Court could in such a case on the application of the tenant take up the dispute as to the standard rent in the first instance and having fixed the standard rent call upon the tenant to pay or tender such standard rent so fixed on or before the date so fixed. If the tenant pays the standard rent fixed on or before the date specified and continues to pay or tender it regularly till the Suit is finally decided he qualifies for the protection of Clause (3)(b). If in the Appeal filed against the Decree the standard rent is enhanced the Appellate Court may fix the date for payment of difference and if on or before that date the difference is not paid requirement of Section 12(3)(b) would not be complied with.

13. The case of PINJARA HABIB MOHMED V/S. PATHAN NISHAR AHMEDKHAN TALIBKHAN & ANR., reported in 1999(2) GLR 1385, decided by me, hardly helps the learned Counsel for the revisionist on the facts and circumstances of the case of this revision.

14. The lower Appellate Court found that when the Judgment was pronounced by the trial Court the tenant had paid all the arrears of rent at the rate of Rs.200/p.m. as ordered by the Court. However, the standard rent was fixed by the trial Court at Rs.170/- p.m. In that way excess rent was deposited by the tenant inasmuch as the standard rent was fixed at Rs.170/- p.m. and not at Rs.200/-. If there was some delay in depositing the rent before the decree was passed on account of uncertainty in the mind of the tenant about the actual rate of standard rent at which he was required to deposit the same it will not indicate that he was not ready and willing to pay the rent. On the other hand he paid the rent in excess. Consequently, he was entitled to protection of Section 12(3)(b) of the Act.

15. The Lower Appellate Court has therefore committed no illegality in allowing the Appeal. I do not find any merit in this revision which is hereby dismissed with no order as to costs.

sd/-

Date : December 08, 2000 (D. C. Srivastava, J.)

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